

11/21/98

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of the Application of Camarato )  
Distributing, Inc. for a Certificate of ) Case No. TA-99-152  
Authority to Provide Telecommunications )  
Services within the State of Missouri. )

**ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL**  
**AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES**

**Procedural History**

Camarato Distributing, Inc. (CDI or the Company) applied to the Commission on October 13, 1998, for a certificate of service authority to provide basic local exchange and interexchange telecommunications services pursuant to Chapter 392 of the Missouri Revised Statutes<sup>1</sup>. CDI asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Section 392.420. CDI is an Illinois corporation with principal offices located at 900 Camarato Drive, Herrin, Illinois 62948.

The Commission issued a notice and schedule of applicants on October 20, directing interested parties wishing to intervene to do so by November 4. No applications requesting intervention were filed.

On March 2, 1999, Staff filed its memorandum recommending that the Commission grant CDI a certificate of service authority to provide basic local and interexchange telecommunications services. Staff recommended the Commission grant CDI its certificate of

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri, (1994), unless specified otherwise.

authority to provide basic local telecommunications service with the following conditions:

- 1) CDI's originating and terminating switched access rates be no greater than the lowest Commission approved corresponding access rates in effect at the date of certification for the large incumbent local exchange company within whose service area CDI seeks authority to provide service, and
- 2) CDI must provide equitable access as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income.

Staff stated that CDI failed to request several of the waivers listed in the Commission's Notice of Applications. Staff recommended that the Commission grant CDI all the waivers listed in the notice, including those omitted from CDI's application.

Staff stated that CDI complies with all of the requirements of an interexchange applicant aside from the filing of a tariff with a 45-day effective date. Staff recommended that the Commission, upon approving CDI's application, order CDI to submit appropriate tariffs bearing a 45-day effective date. Staff stated that CDI currently has an approved interconnection agreement with GTE Midwest Incorporated (GTE) and that Staff is unaware of any other filings that may affect or be affected by this filing.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case,

the Commission may grant the relief requested based on the verified application.

## **Discussion**

CDI seeks certification to provide basic local exchange and interexchange telecommunications services as a non-facility based provider and on a resale basis. The services will be provided in all exchanges currently served by Southwestern Bell Telephone Company (SWBT), GTE, and Sprint Missouri, Inc. (Sprint). CDI is not asking for certification in any area that is served by a small incumbent local exchange provider. CDI proposes to operate in all of the exchanges described in Appendix B to its application. CDI is requesting that its basic local and interexchange telecommunication services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

### **A. Requirements of 4 CSR 240-2.060(4)**

Commission rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing it is authorized to do business in Missouri, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. CDI has provided all the required documentation except for the proposed tariff. The company requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into interconnection agreements with the underlying local

exchange carriers and those agreements have been approved by the Commission. The company agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreements. CDI will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing CDI has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

## **B. Basic Local Service Certification**

Section 392.455, RSMo Supp. 1998, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

CDI submitted as Exhibit C to its application certain financial documentation including its statement of revenues and

expenditures profit and loss as of July 31, 1998. The application stated that the applicant possesses the experience and financial resources necessary to provide telecommunications service to the residents and businesses of Missouri. The applicant stated that it is certificated to provide similar telecommunication services in Illinois, and a copy of its Illinois certificate was attached to its application as Exhibit B.

CDI agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. The applicant also agreed to file and maintain basic local exchange service tariff(s) with the Commission in the same manner and form as the Commission requires of the incumbent local exchange telecommunications companies with which applicant will compete. The Company further agreed that it will offer basic local telecommunications service as a separate and distinct service and will offer basic service within the exchange boundaries of the incumbent local companies unless authorized by this Commission, or any other agency having jurisdiction to offer and provide service in areas smaller than an exchange pursuant to Section 392.200.4, RSMo, or other applicable law.

CDI agreed to be certificated to offer services in all the exchanges presently served by SWBT, GTE and Sprint. CDI stated that the specific incumbent local exchanges within which CDI proposes to offer service are listed in the incumbent providers' respective local exchange tariffs and will be specifically included in the CDI tariff.

CDI also stated that it may seek authority to provide this service in other areas of the state in a subsequent proceeding.

### C. Competitive Classification – Basic Local Exchange Services

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. § 392.361.2. In making that determination the Commission may consider such factors as market share, financial resources and name recognition, among others. In the matter of the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri, 30 Mo. P.S.C. (N.S.) 16 (1989); In the matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition, all the services a competitive company provides must be classified as competitive. § 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

CDI requested classification as a competitive telecommunications company. CDI stated that, pursuant to applicable law, and subject to applicant's right under federal and state laws to seek to offer and offer to provide service in geographical areas smaller than an exchange or in market segmentations or to offer customer specific pricing, similarly situated subscribers located within the listed

exchanges will receive services on equal terms and conditions as set forth in the applicant's tariffs.

CDI requested waiver of the following statutes: Sections 392.210.2, 392.240.1, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1998, and 392.340. CDI also requested that application of these Commission rules be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35<sup>2</sup>.

#### **D. Interexchange Certification**

CDI requested the Commission grant a certificate of service authority to provide interexchange telecommunications services, competitive status and waive certain Commission rules and statutory provisions pursuant to Section 392.420, RSMo. CDI requested classification as a competitive telecommunications company and has requested waiver of the application of rule 4 CSR 240-2.060(4)(H) which requires a proposed tariff with a 45-day effective date be included with this application. CDI stated that it intends to provide interexchange telecommunications services including direct dial calling, toll free calling, operator assisted calling, directory assisted calling, directory assistance service, WATS and MTS and emergency 911 service. CDI has requested the standard waiver of statutes requested by a company seeking to provide interexchange

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<sup>2</sup> CDI's application did not request standard waiver of the Commission rules applicable to interexchange telecommunications services, including 4 CSR 240-30.010(2)(C), 4 CSR 240-32.030(1)(B), 4 CSR 240-32.030(1)(C), 4 CSR 240-32.030(2), 4 CSR 240-32.050(3-6), 4 CSR 240-32.070(4), 4 CSR 240-33.030 and 4 CSR 240-33.040(5).

telecommunications services but has only requested waiver of the following Commission rules: 4 CSR 240-10.020 and 4 CSR 240-30.040<sup>3</sup>.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

- A. The Commission finds that competition in the basic local exchange and interexchange telecommunications market is in the public interest.
- B. The Commission finds that CDI has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.
- C. The Commission finds that CDI has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that CDI meets the statutory requirements for provision of basic local and interexchange telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting CDI a certificate of service authority to provide basic local exchange and interexchange telecommunications services is in the public

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<sup>3</sup> Commission's notice issued October 20, 1998 inaccurately stated that the applicant requested standard waivers.



interest and CDI should be granted a certificate of service authority. CDI's certificate shall become effective when its tariffs become effective.

E. The Commission finds that CDI is a competitive company and should be granted waiver of the statutes and rules requested as set out in the ordered paragraph below.

F. The Commission finds that CDI's certification should be expressly conditioned upon the requirements that 1) CDI's originating and terminating switched access rates be no greater than the lowest Commission approved corresponding access rates in effect at the date of certification for the large incumbent local exchange company within whose service area CDI seeks authority to provide service, and 2) CDI must provide equitable access as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income.

### **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. CDI has requested certification under Chapter 392 which permits the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of

its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1998, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1998.

**IT IS THEREFORE ORDERED:**

1. That Camarato Distributing, Inc. is granted a certificate of service authority to provide basic local exchange and interexchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

2. That Camarato Distributing, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

**Statutes**

- 392.210.2 - uniform system of accounts
- 392.240.1 - rates - reasonable average  
return on investment
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290.1 - issuance of securities
- 392.300.2 - acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.340 - reorganization(s)
- 392.330, RSMo Supp. 1998 - issuance of securities,  
debts and notes

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-35 - reporting of bypass and  
customer-specific arrangements

3. That the request for waiver of 4 CSR 240-2.060(4)(H) which requires the filing of a 45-day tariff along with the application is granted.

4. That Camarato Distributing, Inc. shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer. The tariff shall be filed in a separate case and shall include a listing of the statutes and Commission rules waived above.

5. That Camarato Distributing, Inc. shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, Camarato Distributing, Inc. shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection agreement, and an explanation of why no interconnection agreement is necessary for those areas.

6. That Camarato Distributing, Inc.'s certification and competitive status are expressly conditioned upon the requirements that 1) CDI's originating and terminating switched access rates be no greater than the lowest Commission approved corresponding access rates in effect at the date of certification for the large incumbent local exchange company within whose service area CDI seeks authority to provide service, and 2) CDI must provide equitable access as

determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income.

7. That this order shall become effective on June 1, 1999.

8. That this case may be closed after June 2, 1999.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Shelly A. Register, Regulatory Law Judge, by delegation of authority pursuant to 4 CSR 240-2.120(1) (November 30, 1995) and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri, on this 20th day of May, 1999.

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MAY 20 1999  
COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION